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Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

THE ESTATE OF FREDERICK D.	)	Case No. 1:10-cv-00007-JWS
BLANDOV, THROUGH ITS PERSONAL	)	
REPRESENTATIVE, TINA MARSDEN,	)	
AND SUSAN BLANDOV,	)	
	)	<b>NOTICE OF SUBSTITUTION</b>
Plaintiffs,	)	<b>AND MOTION TO AMEND</b>
	)	<b>CAPTION TO SUBSTITUTE</b>
vs.	)	<b>AND NAME THE UNITED</b>
	)	<b>STATES AS A PROPER</b>
	)	<b>DEFENDANT</b>
UNITED STATES OF AMERICA,	)	
METLAKATLA INDIAN COMMUNITY,	)	
METLAKATLA FIRE DEPARTMENT,	)	
ANNETTE ISLAND SERVICE UNIT,	)	
DESMOND KING, CLARENCE MILTON,	)	
ELDON HAYWARD, KYLE GRAY, AND	)	
WINNA BUXTON,	)	
	)	
Defendants.	)	

The United States of America, by and through counsel, submits a notice of substitution in this case, pursuant to 28 U.S.C. § 2679(d)(2), and moves to strike the

Defendants, METLAKATLA INDIAN COMMUNITY, METLAKATLA FIRE DEPARTMENT, ANNETTE ISLAND SERVICE UNIT, DESMOND KING, CLARENCE MILTON, ELDON HAYWARD, KYLE GRAY, AND WINNA BUXTON.

As the United States of America is already a named party it will stand in the place of these named Defendants.

Under 28 U.S.C. § 2679(b)(1), the remedy against the United States, as provided in 28 U.S.C. § 1346(b) for a negligence action against a federal employee, is exclusive of any other civil action for money damages. 28 U.S.C. § 2679(d)(2) provides that upon certification by the Attorney General that the defendant employee was acting within the scope of its federal employment at the time of the incident out of which the claim arose, any civil action on such claim “shall be deemed an action against the United States under the provisions of this title ... and the United States shall be substituted as the party defendant.”

The United States Attorney for the District of Alaska, Karen L. Loeffler, has certified that, with regard to the allegations in Plaintiffs’ Complaint, Defendants METLAKATLA INDIAN COMMUNITY, METLAKATLA FIRE DEPARTMENT, ANNETTE ISLAND SERVICE UNIT, DESMOND KING, CLARENCE MILTON, ELDON HAYWARD, KYLE GRAY, AND WINNA BUXTON are deemed to be employees of the federal government for purposes of the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b) and 2671-80. Further, the U.S. Attorney has certified that,

with respect to the allegations in Plaintiffs' Complaint, METLAKATLA INDIAN COMMUNITY, METLAKATLA FIRE DEPARTMENT, ANNETTE ISLAND SERVICE UNIT, DESMOND KING, CLARENCE MILTON, ELDON HAYWARD, KYLE GRAY, AND WINNA BUXTON were acting within the scope of their federal employment or volunteer position (pursuant to 43 U.S.C. § 1475b(d)(2) for certification under the FTCA, 28 U.S.C. § 2679(d)(2). See Certification of United States Attorney at Dkts 8 and 9.

Therefore, under 28 U.S.C. § 2679(d)(2), Defendant files this Notice of Substitution and moves to amend the caption by striking the Defendants METLAKATLA INDIAN COMMUNITY, METLAKATLA FIRE DEPARTMENT, ANNETTE ISLAND SERVICE UNIT, DESMOND KING, CLARENCE MILTON, ELDON HAYWARD, KYLE GRAY, AND WINNA BUXTON, with respect to the tort claims alleged in Plaintiffs' Complaint. Defendant also submits and moves for entry of an Order amending the caption in this case to reflect the substitution of the United States as a Defendant.

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Respectfully submitted this 7<sup>th</sup> day of January, 2011.

KAREN L. LOEFFLER  
United States Attorney

/s Susan Lindquist  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 7, 2011,  
a copy of the foregoing **NOTICE OF  
SUBSTITUTION AND MOTION TO  
AMEND CAPTION TO SUBSTITUTE  
AND NAME THE UNITED STATES AS  
A PROPER DEFENDANT** was served  
electronically on:

Jack Garyth Poulson

s/ Susan Lindquist